

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA**

**DARVIN W. GRAY,**

**Plaintiff,**

**v.**

**Case No. 23-CV-045-JFH-GLJ**

**CARRIE BRIDGES,**

**Defendants.**

**OPINION AND ORDER**

On February 3, 2023, Petitioner Darvin W. Gray (“Gray”) filed a “Motion for F.R.C.P. 60b(4) and (6) VOID Judgement and any other reason that Justifies Relief.” Dkt. No. 1. Gray asked this Court to void his state-court sentence. *Id.* at 1. Although Gray had not provided the case number for the challenged state-court proceedings, this Court determined that he is serving multiple sentences that were imposed in Muskogee County District Court Case No. 2011-951. *See* Oklahoma Department of Corrections Offender website at <https://okoffender.doc.ok.gov>.<sup>1</sup>

Gray has submitted a copy of an enrollment verification letter stating he is enrolled with the Muskogee (Creek) Nation. Dkt. No. 1 at 5. He alleged in his motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure that the state had ignored the “Treatise [sic] between the Muskogee (Creek) Nation and the United States of America.” *Id.* at 1. He further asserted “the Muskogee (Creek) Nation reservation was never disestablished, and that Oklahoma never had [j]urisdiction over Indians on Indian Reservation. *Id.*

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<sup>1</sup> The Court takes judicial notice of the Oklahoma Department of Corrections website pursuant to Fed. R. Evid. 201. *See Triplet v. Franklin*, 365 F. App’x 86, 92, 2010 WL 409333, at \*6 n.8 (10th Cir. Feb. 5, 2010).

The pertinent section of Rule 60(b) states the following:

On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order or proceeding for the following reasons:

- (4) the judgment is void; . . .
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b)(4), (6). Because Rule 60(b) is a federal rule, it refers to a judgment, order, or proceeding by a federal court, not a state court.

On March 24, 2023, this Court entered an Opinion and Order denying Gray's motion for relief under Rule 60(b). Dkt. No. 9. The Court explained that Rule 60(b) is only applicable to a federal judgment or order, not a judgment or order by a state court. *Id.* at 1. Because Gray was requesting relief from his state-court judgment, his motion was inappropriate. *Id.* He was informed that he could challenge his state conviction and judgment in federal court through a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *Id.* at 1-2.

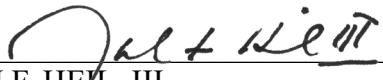
On May 11, 2023, Gray filed a motion for "Objection to Court Ruling." Dkt. No. 11. He contended he was not using Rule 60(b) to attack his underlying conviction, but instead was challenging the "credibility and integrity of the Muskogee County Court to making a Judgment without having subject matter Jurisdiction to do so." *Id.* at 1. He cites *Smallen v. Nunn*, No. CIV 21-364-RAW-KEW, 2023 WL 2759756 (E.D. Okla Apr. 3, 2023), as an example of this Court's entertaining a Rule 60(b)(4) motion filed by a state pro se prisoner. *Id.* A review of the *Smallen* case, however, shows the Rule 60(b) motions in that case were filed in response to the denial of Mr. Smallen's petition for a writ of habeas corpus. *Id.* Mr. Smallen did not file the Rule 60(b) motions standing alone. *Id.* He instead filed them "in the context of a habeas proceeding." *Id.* at \*2.

Gray's other cited case, *Gonzales v. Crosby*, 545 U.S. 524 (2005) also concerned a Rule 60(b) motion in a section 2254 habeas corpus case. *Id.* at 526. The motion was not filed to initiate a case, but was filed by in an underlying habeas corpus action. *Id.* at 527.

After careful review of the record and the above discussion, this Court concludes that Gray has failed to show he is entitled to relief under Rule 60(b).

THEREFORE, IT IS HEREBY ORDERED that Gray's "Motion For: Objection to Court Ruling" [Dkt. No. 11] is denied.

Dated this 26th day of January 2024.

  
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JOHN F. HEIL, III  
UNITED STATES DISTRICT JUDGE